A CITU PUBLICATION...

Labour Codes Decoded
Draconian Designs for Imposing Slavery on the Working Class Formalised

The monsoon session (2020) of Parliament passed the three pending labour codes – the Industrial Relations Code, the Occupational Safety, Health and Working Conditions Code, and the Code on Social Security, in its recently held monsoon session. The Code on Wages was passed in 2019.

The union labour minister reportedly said that 'the government is aiming to implement all the four labour codes in one go by December this year and complete the final stretch of labour sector reforms'. With these 'comprehensive labour reforms' the BJP government expects to jump to the top 10 countries in the World Bank's 'Ease of Doing Business Index'.

The government is apparently in a self congratulatory mood, for the 'courage' it has shown in bulldozing all opposition, inside and outside Parliament and legislate this long pending demand of their corporate masters. Speaking in a webinar of the All India Organisation of Employers, allied body of FICCI (Federation of Indian Chambers of Commerce and Industry), the union labour minister said that this 'government has been constantly striving to bring in the much needed labour reforms in the country for the first time in last 73 years'

Thus 29 existing labour laws have been repealed and replaced by these four labour codes. With all their limitations and shortcomings, all these 29 Acts were intended to regulate the workplace from unhindered exploitation by the employers and to provide some rights and benefits to the workers. They exist no more now.

All these labour laws, were, however, not handed over to the working class in a silver platter. Each and every one of these was the result of persistent struggles by the workers braving harassment, victimisation and persecution by the employers as well as the State that sided with the employers. Some of them date back to the days of British rule. The working class of previous generations fought for their rights making immense sacrifices, losing their jobs, livelihoods and lives too, not always expecting to achieve these in their own life time. While fighting for themselves they also fought for their future generations to lead decent and dignified lives with rights.

It is this vision of our past generations, the legal rights and benefits that they achieved through their struggles, that are under attack since the advent of neoliberalism in our country. Ironically, the attempts to attack these rights and benefits of the working class and other toiling people are being carried out under the dubious term 'reforms'. It is the 'final stretch' of these 'labour reforms' that the BJP government under Modi is proud to complete.

The Repealed Acts:

Four existing Acts – 1) Payment of Wages Act, 2) Minimum Wages Act, 3) Payment of Bonus Act and 4) Equal Remuneration Act stand repealed after The Code on Wages became an Act

Three existing Acts – 1) Trade Unions Act, 2) Industrial Employment Standing Orders Act, and 3) Industrial Disputes Act stand repealed after The Industrial Relations Code became an Act

Nine existing Acts- 1) Employees Compensation Act, 2) Employees State Insurance Act, 3) Employees Provident Fund and Miscellaneous Provisions Act, 4) Employment Exchanges (Compulsory Notification of Vacancies) Act, 5) Maternity Benefit Act, 6) Payment of Gratuity Act, 7) Cine Workers' Welfare Fund Act, 8) Building and Other Construction Workers' Welfare Cess Act and 9) Unorganised Workers' Social Security Act, stand repealed after The Code on Social Security became an Act, and

Thirteen existing Acts – 1) Factories Act, 2) Plantation Labour Act, 3) Mines Act, 4) Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 5) Working Journalists (Fixation of Rates of Wages) Act, 6) Motor Transport Workers Act, 7) Beedi and Cigar Workers (Conditions of Employment) Act, 8) Contract Labour (Regulation and Abolition) Act, 9) Sales Promotion Employees (Conditions of Service) Act, 10) Inter State Migrant Workers (Regulation of Employment) Act, 11) Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 12) Dock Workers (Safety, Health and Welfare Act) and 13) Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act stand repealed after the Occupational Safety, Health and Working Conditions Code became an Act.

And all these 29 laws were repealed by the Govt with a false and fraudulent claim of subsuming the provisions of those 29 laws in the respective codes. The fact is just otherwise. Most of substantive rights and protection related provisions of these 29 labour laws were either thoroughly diluted or total removed in the respective labour codes; and more atrocious anti worker provisions have been incorporated in the new codes.

Thus the BJP government led by Modi completed the 'final stretch' of the so called 'labour reforms', which different governments at the centre led either by the Congress or the BJP were aiming for since three decades. They were not able to do it because of lack of clear majority in Parliament along with the stiff opposition from the working class, which has been continuously on the war path against anti worker amendment to the labour laws. 19 country wide joint general strikes were held since 1991. So, probably the BJP government thinks it has right to be proud of its achievement!

Industrial Relations Code 2020

Changes in industrial relations are central to the neoliberal project of annulment of workers' rights. The Modi led BJP government is carrying this on in the name of codification of labour laws with the Industrial Relations Code as a part of this.

IR Code deals with the basic right of the workers to organise themselves in trade unions, collectively agitate and act against exploitation and intrusions on their basic rights and also the right to grievance-redressal. All these basic rights are sought to be totally curbed. Gross changes are sought to be made in the character of the employment relations by introducing temporary and fragile work relations through fixed term employment, contract work etc in the name of flexibility. Once this is achieved, employers and their representative governments need not bother at all, even if some rights and facilities for the workers remain on paper. They can be rest assured that these will remain only on paper so long as workers in fragile and precarious employment relations devoid of the right to organise, the right to collectively bargain and act will be in no position to get them implemented. With the Damocles' sword of losing jobs and income hanging above their heads, the employers feel reassured that workers will not dare to form unions and fight for the implementation of these rights. Without such rights and initiative from the workers and supportive government and pliant administration on their side, they feel they will be under no threat or challenge to their unbridled exploitation of workers.

While the government claims that the Codes will cover all 50 crore workers, the definition of 'worker' itself in the Industrial Relations Code, is aimed to exclude large sections of workers. Section 2(zr)(iv) of the Code says that any person 'who is employed in a supervisory capacity drawing wages exceeding eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time' will not be covered by the Code. It is to be recalled that the Seventh Pay Commission has recommended Rs 18000 per month as minimum wage for the Govt employees way back in 2015 and it was accepted by the Central Govt (the central trade unions based their demand for minimum wage on the fact that the government of India accepted this recommendation and had in 2020, increased the demand for minimum wage to Rs 21000 per month). In many large industrial establishments and in PSUs, even the unskilled workers are paid wages more than that amount. Now, as per the definition in the IR Code, any worker paid the wage at above "minimum wage level" can be said to be in a 'supervising' capacity, denied the status of 'worker' and pushed out of the applicability of the Code itself.

Section 2(o) of the Code legalises fixed term employment. This has been consistently opposed and rejected by the entire trade union movement, since 2003, when it was first introduced during the tenure of

the first NDA government led by Vajpayee. This itself debunks the union labour minister's claim of 'consultations' with all stakeholders. What is the use of 'nine tripartite consultations' as the union labour minister declared to have held during the drafting stage of the labour codes, if their views are not taken into consideration?

The union labour minister presents fixed term employment as if the government 'introduced the concept' to free the contract workers from exploitation and discrimination by the contractors. If the government was so concerned about the conditions of the contract workers, why does it allow such rampant growth of contract employment in its own departments, in the public sector? Why has it been sleeping over the Supreme Court judgment to pay 'equal wages and benefits' to contract workers doing the same work as permanent employees? Why has it taken no action on the unanimous recommendation of the Indian Labour Conference, to incorporate the provision in the Rules into the main body of the Contract Labour (Regulation and Abolition) Act? Why has it repealed the Act altogether now? Is it to convert contract labour into fixed term employees?

Yes, the Code says that fixed term employee should be treated at par with regular employee in all aspects including pro rata payment of gratuity. Nothing can be more deceptive. The stipulation that fixed term employees should be given same wages and benefits existed in the earlier notifications also. The claim of pro rata gratuity is another humbug. Employers can easily evade payment of gratuity by fixing the term of employment at a few days less than one year.

The reality is that, under a fixed term contract, employers can recruit workers on a fixed term and once the duration ends, throw the workers out without any notice or compensation. The government does not prevent fixed term employment in jobs of permanent nature. There is no limit on the number of times an employer can recruit workers for a job under fixed term contracts. A worker can thus be employed on a fixed term contract to do a job of permanent nature as many times as the employer wishes.

Fixed term employment already exists in several industries including in the public sector – in Alliance Air (a subsidiary of Air India), in the exploration jobs of ONGC, in defence production, in Railways etc as well as in several government departments. They are under constant pressure and anxiety about their renewal of the term. Naturally, unionising and fighting for their due rights will be the last thing in their minds under such circumstances, for fear of losing their jobs. Working class history shows that without organisation, collective bargaining and collective actions, whatever is drafted on paper remains on paper. The experience of the implementation of Contract Labour Act is a glaring example. Repealing Contract Labour Act, shedding crocodile tears on the 'exploitation and discrimination' of contract workers and legalising fixed term employment, is nothing but the height of fraud, deception and hypocrisy.

The intention is clear. It is to do away with the very concept of regular employment, minimise labour cost and provide trade union *mukt* workplaces to the employers to enable unhindered freedom to exploit workers.

Chapter X of Industrial Relations Code, which deals with 'Special provisions relating to layoff, retrenchment and closure in certain establishments' specifies that it will be applicable to an **'industrial establishment in which not less than three hundred workers, or such higher number of workers as may be notified by the appropriate government, were employed on an average per working day in the preceding twelve months'.**

In these establishments employing below 300, lay-off, retrenchment, closure etc do not require any prior approval of the governments. Employers are empowered to fire workers at their whims and will.

'Hire and fire' regime has been a long pending demand of the employers. The government argues that increasing the threshold would attract investment, particularly from China at this juncture, and thus provide employment. This is not based on facts. It is intended to mislead people, and in the midst of the border conflicts with China, rouse nationalist feelings on the one hand, and to pit the workers having jobs and the workers seeking jobs against one another, on the other.

The union labour minister argues that 'retaining the threshold of 100 would not have served much purpose' because 'this threshold has already been done (away) by 16 state governments', that it promotes 'dwarfism

of establishments'; increasing the threshold will lead to formalisation of workforce, encourage labour intensive production and encourage establishments of bigger enterprises'**.** How can 'hire and fire' regime lead to formalisation of workforce ? Rather it will lead to complete informalistion of workplaces keeping the workers always under threat of fire. This, again, is fraudulent and far from truth.

Today, because of technological development, there is huge increase in the productivity of workers. Employers are able to make turnovers and profits of hundreds and thousands of rupees in establishments employing 50 or even less workers. In this situation employment threshold should have been reduced to 50 or below, as demanded by the trade unions. Instead, it was raised by three times, to 300. By this, the government has not increased coverage, not to speak of universalisation and formalisation, by any stretch of imagination. More than 70% of industrial establishments and more than 74% industrial workers will be subjected to the 'hire and fire' regime, as demanded by the employers. Almost the entire workforce in private service and other establishments will be open for this draconian provision. The government will do well to search for the so called 'dwarfism' of establishments somewhere else, not in legal protection to workers.

Even the provisions of Standing Orders on industrial establishments will be applicable to establishments where the number of workers is more than 300, as per Chapter IV of the Code. The Certified Standing Order, within the framework of the Model Standing Order, defines the service conditions of workers in an industrial establishment. This was required to be finalised in consultation with and with the consent of workers. Increasing the threshold for this means, 74% of industrial workforce will now be left to the whims and fancies of the employers in deciding their service conditions. In addition, the Code empowers the 'appropriate government' to increase it further through notification.

Section 6(2) and (4) of the Code make registering a trade union and maintaining its registration more difficult, virtually impossible. As per section 6(2), no trade union can be registered unless 'at least 10% of the workers or 100 workers, whichever is less, engaged or employed in the industrial establishment or industry with which it is connected' are its members. The Code, through so many jugglery of words has empowered the Registrar and also appropriate govts with arbitrary powers to grant or not to grant registration of trade union and also even cancel the registration. One of the indispensable components of "decent work" as espoused by ILO is the right to represent collectively of which Govt of India is a party. Now the same Govt moves to demolish the concept of decent work by curbing formation of trade unions. Can hypocrisy go further ?

Sections 23(1) and (2) of the Code impose severe restrictions on the democratic rights of the workers to elect the leadership of their choice in their unions. In the unorganised sector, 50% of office bearers can be outsiders, other than workers actually employed in an establishment/ sector/ occupation. But in the organised sector, the number of outside office bearers is restricted to one third of the total office bearers or five, whichever is less. This seeks to eliminate the historic and crucial role of full time organisers in building the trade unions. Outside organisers or full time organisers cannot be threatened or intimidated by the employers whereas the workers in the establishment can be threatened with victimisation for their trade union activities. Hence, the government want to restrict the number of outsiders as office bearers against the democratic right of the workers to choose their own office bearers. The existing trade unions too will have to file statements with the Registrar that their executives are in accordance with this Code. The time period before the expiry of which an employee can raise dispute has also been reduced to 2 years, from 3 years earlier.

The union labour minister claimed that many suggestions of trade unions related to union recognition were accepted. But, section 14 of the Code, which deals with trade union recognition, totally ignored the proposal of the secret ballot system for verification and recognition, made by the trade unions. In establishments with more than one trade union, the Code states that recognition would be granted to union having support of 51% or more workers. But how will this support be ascertained? Not by secret ballot, as proposed by the trade unions. The government has retained arbitrary powers to decide the procedure**.**

The composition of Industrial Tribunals has been changed to enable the administration into the quasi judicial system. The Code does not make it binding on the part of the government to refer a case of 'Failure of Conciliation' to Industrial Tribunal. This provision which existed in the Industrial Disputes Act has been totally dropped in the Code. The Code has also abolished the Labour Courts.

The Code virtually bans the basic right of the working class, the right to collective action including the right to strike, by imposing atrocious conditions for the workers to go on strike. As per existing Industrial Disputes Act, establishments in public utility services are only required to serve notice 14 days in advance for strike. Section 62(1)(a) and (b) in the Code makes it compulsory for all establishments to serve prior notice for strike. Not only that. It also deliberately makes the period for serving notice confusing. Section 62(1)(a) says without giving to the employer notice of strike 'within sixty days before striking', while (b) says 'within fourteen days of giving such notice. This ambiguity is surely to enable misinterpretation by the employers and their servile government machinery as per their convenience and resort to vindictive actions against the workers.

In the Industrial Disputes Act that has been repealed, prohibition of strike during pendency of conciliation or Tribunal proceedings was applicable only to public utility services. Now strike is prohibited during pendency of conciliation and seven days after the conclusion of conciliation in all establishments. In case of Tribunal proceedings, strike is prohibited during its pendency in the Tribunal and for sixty days after its conclusion. This gives ample scope to the governments/ labour departments to deliberately prolong the conciliation process to prevent strikes. The concerned officials will definitely explore and use this window to prevent strikes.

Along with this, stringent punishment including huge fine and imprisonment are imposed on workers going on so called 'illegal strike' and also those who 'instigate' them and support them.

At the same time, declaration of lock out has been made easier for the employers in all industries. Notice of lockout will no more be necessary where the workers are already on strike; only intimation about the lockdown needs to be sent to the authority concerned.

It is appalling that the government wants to 'enhance industrial peace and harmony' by incorporating such atrocious measures through which any strike can be termed 'illegal' and punitive actions taken against workers. The reality is that the BJP government wants to 'prevent uncontemplated breakdown of production in an establishment' and climb up the World Bank's 'Ease of Doing Business Index' by legalising slave like 19th century conditions on the workers.

Occupational Safety, Health and Working Conditions Code

The OSH Code is no different in intent and content, meant to create confusion facilitating evasion. This starts from the definitions of employees and workers. For example, Chapter V, on health and working conditions, refers to 'employees' whereas Chapter VI and VII, dealing with welfare and working hours etc refer to 'workers'. Does that mean that Chapter V is for 'employees' and Chapter VI and VII are for 'workers'?

Contrary to the claims of the government of expanding coverage, it keeps more workers out of the purview of protection. Section 2(w) of the OSH Code defines factories as manufacturing units with twenty or more workers using electric power and those with forty or more workers, if they don't use electricity. The threshold, for both units using electricity and those running without electricity, has been doubled. Most of the manufacturing units in the MSME sector which use power but employ less than 40 workers. The workers in all these units will be out of the purview and coverage of the Code. And they represent substantial section of he industrial workforce. In fact, the Code throws more workers and establishments out of the coverage of the labour laws at the mercy of the employers' will and whims and that is the main intention of the entire codification exercise to ensure "ease of loot and extraction on workers by the employers". And such machinations of diluting coverage and protection of workers are there in various provision of the Code. Dubious as well as criminal indeed!

The system of employing contract workers has become rampant. Contract workers comprise more than 50% of the workers in the public sector; in the private sector, the share of contract workers in the total workforce is more than 70%. Most of the contract workers are employed in permanent/ perennial nature of work, for years together. Part I of Chapter XI of the Code deals with contract workers. Many of the welfare provisions contained in the Contract Labour (Regulation and Abolition) Act, which is repealed by the OSH

Code, have been done away with in the Code. What was hitherto illegal has been legalised through the Code.

Contractors employing less than fifty workers are no longer required to obtain license. Earlier, under the now repealed Contract Labour (R&A) Act, this figure was 20. Now it has been more than doubled. Thus, without any license, the Code enables overwhelming majority of contractors to exploit workers without any regulation and control.

The concept of permanent and perennial nature of work for prohibiting contract employment is removed. Instead, the concept of 'core' has been included, but this is not defined in the body of the Code; it is left to the 'appropriate government', in which the workers and their unions will not have any say.

The obligation of the principal employer to ensure welfare and even payment of statutory wages has been thoroughly diluted. The Code does not even mention same pay and benefits for contract workers doing the same work as the regular workers, which was provided under Rules of the Contract Labour (R&A) Act and ordered by the Supreme Court.

The tripartite Central Advisory Contract Labour Board, which used to deal with the complaints of contract workers, has been done away with.

In totality increase of threshold of employment for coverage und OSHWC Code together with higher (more than doubled) threshold of employment for a Contractor required to be licensed has actually thrown almost 90 per cent of the industrial workforce alone out of coverage and protection of any labour laws pertaining to their working conditions and occupational safety, not to speak of workers in the service sector and unorganised sector.

This clearly exposes the sham concern of the union labour minister for the contract workers' conditions.

The entire world saw with dismay, the miseries of the migrant workers in our country, revealed by the Covid 19 pandemic and the lockdown. The Inter State Migrant Workers' Act, 1979 that had been in existence was never taken seriously for implementation by the government. Now, despite the demand of the trade unions not to repeal but strengthen it, the BJP government went ahead to repeal the same on the false plea of subsuming under the OSH Code. It is claiming, fraudulently, that all the provisions of the earlier Act are incorporated in the OSH Code. But, Part II of Chapter XI, which deals with interstate migrant workers, in fact, pushes the migrant workers out of any protection.

The threshold of employment of migrant workers in any establishment, for the purpose of coverage under the OSH Code is doubled. In the now repealed Act, it was 5; the Code makes it 10. But the fraud goes beyond this. Overwhelming majority of interstate migrant workers are employed through contractors. Part I of the same Chapter XI dealing with contract workers, exempts contractors employing up to 50 workers from requiring a license. Thus, overwhelming majority of migrant workers, are left to license-free unregulated exploitation by the contractors.

As per the repealed Inter-State Migrant Workmen's Act 1979, the principal employer and the contractor are obliged to furnish details of migrant workers employed by them in a prescribed format. They had to provide the migrant workers with photographed pass book. The Code has no such stipulation. The maintenance of registers of migrant workers is again left to the mercy of the appropriate government – 'as may be prescribed by the appropriate government' – a clause that appears hundreds of times in the Codes.

Does the shameless public statement that the union labour ministry has no record of migrant workers including those who died on their way back to their native places during the lockdown, come as a surprise?

So much for the compassion of the Modi led BJP government towards contract and migrant workers and its expansion of coverage of workers under the labour Codes!

The OSH Code that also deals with working conditions does not specify any limit on overtime work, as was in the repealed Factories Act. It empowers the 'appropriate government' to prescribe total number of hours of overtime. This makes the provision, contained in the Code itself, of consent by individual workers for

overtime work including the right to refuse, totally superfluous. Section 26(1) provides for a worker to work not more than six days in a week. But the very next clause, Section 26(2) empowers the appropriate government to exempt any worker from the above provision, with the provision of compensatory holiday in lieu of weekly off day, within two months.

Regular inspection of workplaces by inspectors is the lifeline of enforcement of any Act dealing with working conditions in factories. But, sections 34 to 42 of Chapter IX of the Code, dealing with working conditions totally dilute the role of inspection and inspectors. The role of inspectors, as enforcement officers, is now diluted by changing their name as 'inspector cum facilitator'. The 'inspector cum facilitator' is bound by the inspection scheme, which the 'appropriate government' is empowered to lay down.

The Code does not provide powers to the inspectors, of free entry into an establishment, at any time without prior notice and as frequently as possible, as envisaged by the ILO Convention, to secure effective enforcement of laws.

Inspection will be on the basis of randomised selection from the portal of registered establishments. At present hardly 40% of the functioning establishments are registered and find place in the portal. Thus, majority of the establishments will be virtually out of any inspection process, with license for violation of the Code. There will be no inspection based on complaints of workers or their unions. The inspector cum facilitator can inspect any factory only with the approval of the appropriate government. Thus, the new role with the new name is not to ensure implementation of the Act but actually to facilitate its violation.

The Code also bars civil courts from hearing any matters under the Code. If anybody is aggrieved by the orders of the authorities, there is a provision for an administrative appellate authority to be notified. But, it does not provide for a judicial mechanism for hearing disputes thereby depriving workers their right to redress grievances on violation and misinterpretation of any provisions in the Code.

Women are allowed to be employed in all establishments for all types of work and with their consent, in night work, subject to such conditions related to safety, holidays and working hours 'as may be prescribed by the appropriate government'. If the appropriate government considers employment of women is dangerous in an establishment or any particular process, it may require the employer to provide adequate safeguards. Trade unions, representing the women workers, have no role.

One thing needs to be noted in particular. The sector specific Acts, which have been repealed dealt with working conditions, employment relations, safety and other related matters taking into account the sector specific work patterns, processes, problems and issues. This was the case in Acts related to construction, beedi and cigar, mines, and docks workers, working journalists, sales promotion employees, motor transport workers etc. This ensured some protection to the concerned workers. Repealing all these, the OSH Code seeks to define working conditions of all in the same **'one model fits all'** manner. As a result, most of the workers in the unorganised sector, as in beedi and cigar, construction, motor transport, and major sections of working journalists, migrant workers, contract workers will be the worst to suffer as their working conditions will be subject to arbitrary interpretation by the employers with a helping hand from the 'appropriate government'.

Code on Social Security 2020

The Code on Social Security is no different. It does not provide any new social security benefits to the workers, nor does it expand coverage in the least through any substantive enforceable provision, contrary to the false propaganda unleashed by the BJP government and its obedient loud 'speakers' in the corporate media, print and electronic.

The BJP government's argument that the Code on social security has simplified and rationalised the nine Acts that have now been repealed, is bogus; it is again, a fraud on the workers. What it really does is grossly dilute whatever benefits were available to the workers under those Acts. All the schemes and rules framed under the repealed Acts will be in force for only one year now. After that, workers have to wait for the 'empowered' governments to design schemes and rules under the Code.

Provident Fund, Pension and Deposit Linked Insurance

The Central Board of Trustees constituted under the Employees Provident Fund And Miscellaneous Provisions Act that has now been repealed, has unanimously recommended that the threshold for coverage under the Act should be brought down to 10 from 20. But the BJP government refused to widen coverage by doing so. The Code on Social Security continued the stipulation that establishments employing 20 or more workers only will be covered by the EPF scheme.

But the government has done what was never demanded by the workers and their unions. It has reduced the contribution to EPF to 10% from the previous 12%. This is nothing but a measure to benefit the employers.

Further, the government of India empowered itself through several sections in this Code:

- Section 16(1) of the Code empowers it to further reduce the contribution to EPF whenever it deems necessary.

- Section 15(I)(e) empowers it to frame, modify, change the Employees' Provident Fund, Employees' Pension Scheme and Employees' Deposit Linked Insurance Scheme (EDLIS), thereby reducing the Central Board of Trustees (CBT), the statutory tripartite body, to a mere recommendatory forum.

  In an online meeting of the CBT, the government came with a proposal to convert EPS into the defined contribution scheme NPS. Though the workers' representatives in the CBT resisted it, the Code empowers the government to have its way.

- Section 20(2) empowers the government to exempt any establishment or any class of establishments from the EPF scheme either prospectively or retrospectively in consideration of the financial position of the establishments or other circumstances.

- Section 1(5) of the Code on Social Security allows any establishment to exit from EPF if the employers and majority of employees jointly seek such an exit. This is nothing but an attempt to prepare ground for dismantling the time tested social security scheme like EPF. An Act to provide social security for the workers, passed by Parliament, can be rendered optional for individual establishments, on which it should be enforced upon. Manipulative employers in majority of the small and medium establishments can easily force the workers to opt for exiting the EPF scheme, depriving them the much needed social security.

  Thus the Code on Social Security, under the deceptive claim of rationalise the existing social security schemes including EPF, has actually laid the foundation of the process of dismantling this time tested social security scheme by open-endedly empowering the Central Govt, to reduce the rate of contribution, change the existing EPF scheme (obviously to benefit the employers' class), exempt any establishment from the EPF schemes and provisions and finally allowing any establishment to exit from the EPF obligations altogether. The Code law created the enabling arrangements for self-elimination by empowering the Govt to demolish the EPF scheme altogether at appropriate time as their corporate masters desire.

Employees State Insurance

Similar will be the fate of Employees' State Insurance (ESI) scheme, another time tested and well functioning welfare scheme benefiting workers at present. The Code has considerably diluted the authority of the governing body of the ESI Corporation which administers the scheme at present.

ESI is a scheme wholly funded by the workers' money – the contributions of the employees and by the employers as part of the service benefits to the employees. Despite the fact that the workers and their unions never demanded any reduction in the rate of contribution to ESI, the government has consistently been trying to reduce it, to benefit the employers. Recently, bulldozing the governing body of the Corporation and, particularly opposition of the workers' representatives in ESI governing body, the BJP government notified reduction in the contribution of employers from 4.75% to 3.25% and of the workers from 1.75% to 0.75%. This will naturally curtail the facilities provided by ESI, which have not yet reached all the districts in the country having considerable number of workers.

Now, section 29(2) of the Code fully empowers the government of India to decide the rates of contribution to ESI. The tripartite governing body is reduced to only a recommendatory forum.

As in the case of EPF, section 1(7) of the Code allows any establishment to exit from the ESI scheme if the employer and the majority of employees jointly ask for such exit. Even today, the coverage of ESI is much less than what it should have been. Despite being applicable to all establishments employing 10 or more workers, total number of workers covered by ESI is way below the number of workers under EPF, which applies to establishments employing 20 or more workers. No need to say that this will enable the employers to push majority of workers out of the purview of the scheme and its benefits.

The BJP government which makes grandiose claims of expanding social security cover, of covering gig workers, platform workers etc through separate schemes, deliberately chose to ignore the around 80 lakh workers who are directly employed by its different departments and implementing its own welfare schemes. Despite the consistent demands by the anganwadi employees, ASHAs, midday meal workers, teaching and non teaching staff of the National Child Labour Project being implemented by none other than the Labour Ministry, EPF and ESI have not been made applicable to them. It has refused to implement the unanimous recommendation of the 45th Indian Labour Conference in this regard. The Code is totally silent on them.

The attempts of the BJP government to dilute and dismantle ESI to benefit the employers and promote private insurance companies are well known.

Repeal of Sector Specific Social Security/Welfare Schemes

Several sector specific welfare Acts, that ensured funds through collection of cess, for providing social security benefits to the workers in those sectors, have been already repealed by the BJP government after the introduction of GST. For example, Beedi Workers Welfare Cess Act was repealed in 2017, abolishing the cess from 1st July 2017. Iron Ore Mines, Manganese Mines Ore Mines and Chrome Ore Mines Labour Welfare Cess, Mica Mines Labour Welfare Fund Cess, Limestone and Dolomite Mines Labour Welfare Fund Cess were all abolished from 21st May 2016, by amending the respective Acts. Thus the lakhs of workers in these sectors who were till then covered under the respective Acts were also deprived of the benefits that they were enjoying till then.

But, the Code on Social Security does not stipulate anything specific for these workers.

Building & Other Construction Workers

Chapter VIII of the Code deals with social security and cess for the building and other construction workers. Though it talks about collection of cess for providing welfare benefits for the building and other construction workers, it does not clearly specify the details of benefits, specific entitlements and mode of delivery etc.

Section 103 of the Code provides for the employer to deposit the cess on the basis of his/ her self assessment of the cost of construction. The government has not accepted the suggestion that cess should be calculated on the basis of audit by professional accountants/ auditors who are familiar with the building and construction industry.

Besides, it is totally silent on the management of the fund. No procedures or guidelines have been prescribed for its management. Today, huge amount money collected through cess for the welfare of the building and other construction workers is lying unspent or misspent. A CAG report, requisitioned by the Supreme Court, found that these funds were used by some state governments to purchase laptops and washing machines.

The Code totally ignored the recommendations of the Parliamentary Standing Committee on Labour about regular internal audit and periodic CAG audit to prevent such mismanagement of the fund. Another recommendation, to incorporate a mechanism for portability of BOCW funds from one state to another, as most of the construction workers are migrant workers who work in one state but need the benefits in another, was also ignored.

Other Unorganised Sector Workers

Chapter IX deals with the social security for unorganised workers, gig workers and platform workers. It is eloquent on intentions and vague on finances. No concrete schemes are formulated in the Act; no concrete funding arrangement is made. These are left to the governments, who 'shall frame and notify, from time to time, suitable welfare schemes for unorganised workers'.

Thus it becomes very clear - that the Code on Social Security is not intended to either expand coverage or extend more benefits to the workers. Its only intention is to dilute and curtail whatever social security benefits are now available to the small sections of workers. This is being done deceptively by dangling the promise of social security to all unorganised, gig, platform workers etc. The government is playing the game of pitting one section of the workers against the other to mislead and divide them. This will only help the exploiting employers' class.

Another, no less fraudulent purpose is to gradually establish full control of the huge accumulation of social security funds with Employees Provident Fund Organisation, Employees State Insurance Corporation, and the Cess fund under Construction Workers Welfare Scheme. All these belong to the workers, with the governments having no contribution whatsoever. So long these funds particularly with EPFO and ESIC were governed under the supervision of statutory tripartite committees. Although the Code has till now retains reference to such tripartite committees, in much diluted format, Code Bill itself makes provision to dilute them further to make them increasingly toothless.

The entire codification exercise is in fact meant to enlarge the scope of intervention by the governments by bypassing Parliament and the democratic process. The Industrial Relations Code empowers 'appropriate government' to make substantive changes through notifications. The Code on Social Security is full of stipulations like 'as may be specified', 'as may be prescribed', 'as may be framed' in the case of most of the important and substantive provisions. Provisions for entitlement, contributions and benefits are left unspecified for such future interventions by the governments. Thus, 'appropriate governments' are 'empowered' to 'specify', 'prescribe' and 'frame' many important provisions and notify changes in the Codes. Parliament under the rule of the present BJP government thus abdicates its own role in making any amendments to these Acts in future, passed by it now. The government has usurped open ended powers also to grant exemptions from any of the provisions in the Codes, to any establishment it deems fit.

Code on Wages

The Code on Wages was passed in 2019. It is to be recalled that the Left MPs in Rajya Sabha proposed amendments to the Bill and also insisted on division and were able to force such division. The amendments got 8 votes, comprising the 6 Left MPs and a couple of others. This indicates the attitude of the ruling class parties to the most important issue of the workers – their wages.

In passing the Code on Wages also, the BJP government did not pay any heed to the unanimous recommendations of the Parliamentary Standing Committee on Labour, which submitted its report on an identical Bill in 2018.

The Code on Wages Act claims to have subsumed four wages/ bonus related Acts that existed till then. But in reality, what it does is selectively incorporate some of the provisions while diluting or removing many to the advantage of the employers. It does not incorporate the basis for fixing minimum wage, recommended by the 15th Indian Labour Conference, way back in 1957 and reinforced by the Supreme Court in its judgment in the Raptakos and Brett case in 1992. This formula was reiterated again and again in the 44th ILC (2012), the 45th ILC (2013) and the 46th Indian Labour Conference (2015), the only one held under the Modi regime. The Parliamentary Standing Committee on Labour has also recommended to incorporate this unanimous recommendation of the ILCs.

After the Bill was passed in Parliament, the Draft Rules were notified in November 2019, seeking comments. The formula for fixing minimum wage was included in the Draft Rules. The trade unions gave their detailed comments on that. But, strangely, instead of finalising and notifying the Rules, the BJP government has again notified the Rules in July 2020. Till today, the government has not notified the final Rules. The labour minister announced that Rules related to all the Codes would be notified together and implemented by December 2020. Is the inordinate delay in notifying the Wage Code Rules due to the

pressure of the employers, to remove even the reference to the formula from the Rules? The workers are genuinely apprehensive of the BJP government's intentions, given its history of going to any extent to serve its corporate masters.

Instead of the minimum wage based on scientific calculation of the minimum requirement of workers and unanimous recommendations of the ILC and upheld and further improved by the Supreme Court the BJP government has been talking about floor level wages, which is an absolute hoax. The government is not even ready to accept the deliberately suppressed minimum wage arrived by a so called 'Expert Committee' appointed by itself. In July 2019, it declared a ridiculously low Rs 178 per day as floor level minimum wage. This is much lower than the statutory minimum wage prevalent in at least 31 locations in the country, including the Union Territories. This alone is enough to puncture the balloon the BJP government's claims of magnanimity towards workers.

The Parliamentary Standing Committee on Labour has also recommended that the ambiguity in the definitions of 'workers' and 'employees' in the Bill should be removed. This too was ignored to allow free hand to the employers to utilise this ambiguity to their own advantage and harass workers, particularly those covered under Sales Promotion Employees' Act, Working Journalists' Act etc

The Code on Wages sanctions even more vindictive measures against the workers. It authorises deduction of eight days' wages for one day strike by the workers. It curbs the rights of the unions to have access to the balance sheet and other accounts of the company for the purpose of negotiation on payment of bonus.

And, as in the Occupational Safety, Health and Working Conditions Code, it dilutes and disempowers the enforcement machinery. Inspectors are replaced by Inspector cum Facilitator. Regular and routine inspections are restrained. Inspection is allowed only with the prior permission of the highest level of the appropriate government, tantamount to ban on inspection. Employers have been enabled and empowered to freely exploit workers and flout the laws even in their diluted form. The government, without any substantial evidence anywhere across the world, expects to promote 'East of Doing Business' and attract investment by pushing workers into servitude.

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Thus, codification of labour laws by the BJP government is not meant to 'universalise the right to minimum wage of workers' or to ensure 'universal coverage of all organised and particularly unorganised workers in the social security net' or 'to establish dynamic occupational safety regulatory framework' or to 'strengthen dispute resolution machinery in the industrial establishment'; neither is it for 'enabling effective participation of trade unions' – as claimed by the union labour minister. Each and every one of these claims is totally false, meant to deceive workers and the people in general. They are meant to cover up the BJP government's real intention to do exactly the opposite.

But one claim that the minister made is totally true. 'These labour codes will bring qualitative change in the lives of our workers'. Yes, a qualitative change for the worse – push them into conditions of servility that existed in the 19th century; conditions against which the working class fought and won the existing rights.

The nefarious design to impose conditions of slavery through overhauling the labour laws in favour of the capitalists through this codification exercise is integral to the project of the capitalist class under present neoliberal order to centralise and authoritarianise the entire governance, of the economy, of the political system and also of the society in the midst of deepening of the systemic crisis of capitalism in every passing day. And finally the entire democracy and related institutions are also targeted for this authoritarian onslaught.

Therefore, determined united struggle of working class in defence of their rights and dignity and against the onslaught of Codification is also integral to and of crucial importance in the struggle in defence of democracy and against the authoritarian attacks on peoples' rights.

Let the BJP government know that the working class will continue its fight and will not accept lying down the conditions of slavery being sought to be imposed on them through united struggles of determined

defiance and resistance. It will march towards the path to defeat authoritarianism and also to end exploitation by the capitalist class.

The general strike on 26th November 2020 is the beginning of this path to achieve that objective through bigger and sustained militant struggles including multiple days' strike and to decisively defeat the destructive and authoritarian design of the Govt and their corporate masters, both foreign and domestic.

October 2020